

SENATE BILL No. 533

DIGEST OF INTRODUCED BILL

Citations Affected: IC 22-2-9; IC 22-4-19-6; IC 22-8-1.1.

Synopsis: IOSHA and labor administrative matters. Provides that an employee may file a civil lawsuit seeking recovery of unpaid wages without filing a wage claim with the department of labor (department). Allows the department of workforce development to release certain employer specific information to the department for use only: (1) by the division that oversees the federal Bureau of Labor Statistics survey; and (2) for the purpose of refining and preparing the survey of occupational injury and illness. Allows the department to collect a penalty assessment assessed under the Indiana occupational safety and health act (IOSHA) by obtaining a judgment lien against an employer's real or personal property or levying upon an employer's property held by a financial institution. Provides that an individual who is an officer or member of a domestic or foreign corporation, a limited liability company, a partnership, or a limited partnership is personally liable for the payment of an IOSHA penalty assessed against the individual's employer. Provides that a successor employer assumes the unpaid IOSHA penalty assessments of a predecessor employer. Allows the department commissioner to enter into an agreement with an employer concerning the correction or abatement of an IOSHA violation. Extends by 30 days the time in which the attorney general is required to file an action after receiving an IOSHA whistleblower discrimination complaint.

Effective: July 1, 2009.

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January 15, 2009, read first time and referred to Committee on Pensions and Labor.

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Introduced

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

SENATE BILL No. 533

A BILL FOR AN ACT to amend the Indiana Code concerning labor and safety.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 22-2-9-4 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2009]: Sec. 4. (a) **Subject to section 4.5 of this**
3 **chapter**, it shall be the duty of the commissioner of labor to enforce
4 and to ~~insure~~ **ensure** compliance with the provisions of this chapter, to
5 investigate any violations of any of the provisions of this chapter, and
6 to institute or cause to be instituted actions for penalties and forfeitures
7 provided under this chapter. The commissioner of labor may hold
8 hearings to ~~satisfy himself as to~~ **determine** the justice of any claim, and
9 ~~he~~ **the commissioner** shall cooperate with any employee in the
10 enforcement of any claim against ~~his~~ **the employee's** employer in any
11 case whenever, in ~~his~~ **the commissioner's** opinion, the claim is just
12 and valid.

13 (b) The commissioner of labor may refer claims for wages under
14 this chapter to the attorney general, and the attorney general may
15 initiate civil actions on behalf of the claimant or may refer the claim to
16 any attorney admitted to the practice of law in Indiana. The provisions
17 of IC 22-2-5-2 apply to civil actions initiated under this subsection by

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the attorney general or ~~his~~ **the attorney general's** designee.

SECTION 2. IC 22-2-9-4.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 4.5. (a) This section applies to a claim for unpaid wages that occurs after June 30, 2009.**

(b) An employee is not required to request an investigation under this chapter before filing a suit under IC 22-2-5-2.

SECTION 3. IC 22-4-19-6, AS AMENDED BY P.L.108-2006, SECTION 39, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 6. (a) Each employing unit shall keep true and accurate records containing information the department considers necessary. These records are:

- (1) open to inspection; and
- (2) subject to being copied;

by an authorized representative of the department at any reasonable time and as often as may be necessary. The department, the review board, or an administrative law judge may require from any employing unit any verified or unverified report, with respect to persons employed by it, which is considered necessary for the effective administration of this article.

(b) Except as provided in subsections (d) and (f), information obtained or obtained from any person in the administration of this article and the records of the department relating to the unemployment tax, the skills 2016 assessment under IC 22-4-10.5-3, or the payment of benefits is confidential and may not be published or be open to public inspection in any manner revealing the individual's or the employing unit's identity, except in obedience to an order of a court or as provided in this section.

(c) A claimant at a hearing before an administrative law judge or the review board shall be supplied with information from the records referred to in this section to the extent necessary for the proper presentation of the subject matter of the appearance. The department may make the information necessary for a proper presentation of a subject matter before an administrative law judge or the review board available to an agency of the United States or an Indiana state agency.

(d) The department may release the following information:

- (1) Summary statistical data may be released to the public.
- (2) Employer specific information known as ES 202 data and data resulting from enhancements made through the business establishment list improvement project may be released to the Indiana economic development corporation only for the following purposes:

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(A) The purpose of conducting a survey.

(B) The purpose of aiding the officers or employees of the Indiana economic development corporation in providing economic development assistance through program development, research, or other methods.

(C) Other purposes consistent with the goals of the Indiana economic development corporation and not inconsistent with those of the department.

(3) Employer specific information known as ES 202 data and data resulting from enhancements made through the business establishment list improvement project may be released to the budget agency only for aiding the employees of the budget agency in forecasting tax revenues.

(4) Employer specific information known as ES 202 data for the most recent quarter and summarized to contain only:

(A) the average employment figure;

(B) the employer's name, address, city, state, and ZIP code;

(C) the county code where the employer is doing business;

(D) the employer's six (6) digit NAICS code;

(E) the employer's TEI;

(F) ownership information for the employer; and

(G) the employer's UI identification number;

may be released not earlier than September 1 and not later than October 1 each year to the department of labor for use only in refining and preparing the survey of occupational injury and illness (SOII) by the division that oversees the federal Bureau of Labor Statistics survey.

~~(4)~~ (5) Information obtained from any person in the administration of this article and the records of the department relating to the unemployment tax or the payment of benefits for use by the following governmental entities:

(A) department of state revenue; or

(B) state or local law enforcement agencies;

only if there is an agreement that the information will be kept confidential and used for legitimate governmental purposes.

(e) The department may make information available under subsection (d)(1), (d)(2), ~~or~~ (d)(3), **or (d)(4)** only:

(1) if:

(A) data provided in summary form cannot be used to identify information relating to a specific employer or specific employee; or

(B) there is an agreement that the employer specific

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information released to the Indiana economic development corporation, ~~or~~ the budget agency, **or the department of labor** will be treated as confidential and will be released only in summary form that cannot be used to identify information relating to a specific employer or a specific employee; and

(2) after the cost of making the information available to the person requesting the information is paid under IC 5-14-3.

(f) In addition to the confidentiality provisions of subsection (b), the fact that a claim has been made under IC 22-4-15-1(c)(8) and any information furnished by the claimant or an agent to the department to verify a claim of domestic or family violence are confidential. Information concerning the claimant's current address or physical location shall not be disclosed to the employer or any other person. Disclosure is subject to the following additional restrictions:

(1) The claimant must be notified before any release of information.

(2) Any disclosure is subject to redaction of unnecessary identifying information, including the claimant's address.

(g) An employee:

(1) of the department who recklessly violates subsection (a), (c), (d), (e), or (f); or

(2) of any governmental entity listed in subsection ~~(d)(4)~~ **(d)(5)** who recklessly violates subsection ~~(d)(4)~~; **(d)(5)**;

commits a Class B misdemeanor.

(h) An employee of the Indiana economic development corporation, ~~or~~ the budget agency, **or the department of labor** who violates subsection (d) or (e) commits a Class B misdemeanor.

(i) An employer or agent of an employer that becomes aware that a claim has been made under IC 22-4-15-1(c)(8) shall maintain that information as confidential.

SECTION 4. IC 22-8-1.1-35.6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 35.6. (a) A safety order, penalty assessment, or notice of failure to correct violation which has become final, either through lack of any contest under section 28.1 of this chapter, or after final action by the board, or after judicial review, shall be enforced by the commissioner **under this section or section 35.7, 35.8, or 35.9 of this chapter. The remedies provided in this chapter are cumulative and are in addition to any other remedy available to the commissioner. The commissioner's decision to pursue one (1) of the remedies does not preclude the subsequent or corresponding use of one (1) or more of the other remedies available to the commissioner.**

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(b) If an employer fails to comply, the commissioner ~~shall~~ **may** refer the matter to the attorney general, who shall promptly institute proceedings under IC 4-21.5-6 to enforce the safety order, penalty assessment, or notice of failure to correct violation.

SECTION 5. IC 22-8-1.1-35.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 35.7. (a) If an employer fails to pay a penalty assessed under this chapter within ten (10) days of the date that the assessment is final under section 35.6 of this chapter, the commissioner or the commissioner's representative may file with the circuit court clerk of any county in which the employer owns real or personal property a warrant for the amount of the assessment, interest, penalties, collection fee, sheriff's costs, and clerk's costs, if applicable. The commissioner or the commissioner's representative may also send the warrant to the sheriff of any county in which the employer owns real or personal property and direct the sheriff to file the warrant with the circuit court clerk.**

(b) When the circuit court clerk receives the warrant from the commissioner, the commissioner's representative, or the sheriff, the clerk shall record the warrant by making an entry in the judgment debtor's column of the judgment record listing the following:

- (1) The name of the employer stated in the warrant.**
- (2) The amount of the warrant.**
- (3) The date the warrant was filed with the clerk.**

(c) When the entry is made, the total amount of the warrant becomes a judgment against the employer. The judgment creates a lien in favor of the state that attaches to all the employer's interest in any real or personal property in the county.

(d) At least thirty (30) days before the date on which the commissioner intends to file a warrant as provided by subsection (a) in order to impose a lien on real property, the commissioner or the commissioner's representative must send a written notice:

- (1) to the owner of the real property that would be subject to the lien; or**
- (2) if the owner of record cannot be identified, to the tenant or other person having control of the real property;**

of the date on which the commissioner or the commissioner's representative intends to file the warrant in order to impose a lien on the real property. The commissioner or the commissioner's representative shall provide the circuit court clerk of the county in

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1 which the real property that would be subject to the lien is located
2 with a copy of the written notice described in this subsection.

3 (e) Before the date on which the commissioner intends to file a
4 warrant in order to impose a lien on real property under this
5 section, the owner of the real property may request that a hearing
6 be conducted under IC 4-21.5. A hearing conducted under this
7 subsection and IC 4-21.5 shall be limited to determining if there is
8 probable cause to believe that the penalty assessment is final and
9 is owed by the property owner. For the purposes of a hearing
10 conducted under this section and IC 4-21.5, an administrative law
11 judge is the ultimate authority.

12 (f) If an owner requests a hearing under subsection (e), the
13 commissioner or the commissioner's representative may not file a
14 warrant in order to impose a lien on the real property until the
15 commissioner determines after the hearing that there is probable
16 cause to believe that the penalty assessment is final and is owed by
17 the property owner.

18 (g) If the commissioner or the commissioner's representative
19 provided a circuit court clerk with a copy of a written notice under
20 subsection (d), the commissioner or the commissioner's
21 representative shall retrieve the copy of the written notice from the
22 circuit court clerk on one (1) of the following dates:

23 (1) On the date a lien is imposed on the real property
24 described in the written notice.

25 (2) On the day after the date the lien was to be imposed on the
26 real property described in the written notice, whenever:

27 (A) a hearing under subsection (e) is not held; and

28 (B) a lien is not imposed on the real property described in
29 the notice by the date indicated in the notice.

30 (3) On the day after the date the commissioner determines
31 that a lien may not be imposed on the real property,
32 whenever:

33 (A) a hearing under subsection (e) and IC 4-21. 5 is held;
34 and

35 (B) a lien is not imposed on the real property described in
36 the notice.

37 (h) A judgment obtained under subsection (c) is valid for ten
38 (10) years from the date the judgement is filed.

39 (i) A judgment obtained under subsection (c) may be released by
40 the commissioner:

41 (1) after the judgment, including all accrued interest to the
42 date of payment, has been fully satisfied; or

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(2) if the commissioner determines that the assessment or the issuance of the warrant was in error.

(j) If the commissioner determines that the filing of a warrant was in error, the commissioner or the commissioner's representative shall mail a release of the judgment to the employer and the circuit court clerk of each county where the warrant was filed. The commissioner or the commissioner's representative shall mail the release as soon as possible but not later than seven (7) days after:

(1) the determination by the commissioner that the filing of the warrant was in error; and

(2) the receipt of information by the commissioner or the commissioner's representative that the judgment has been recorded under subsection (b).

(k) If the commissioner determines that a judgment described in subsection (j) is obstructing a lawful transaction, the department shall mail a release of the judgment to the employer and the circuit court clerk of each county where the judgment was filed immediately upon making the determination.

(l) A release issued under subsection (j) or (k) must state that the filing of the warrant was in error.

(m) After a warrant becomes a judgment under subsection (b), the commissioner may levy upon the property of the employer that is held by a financial institution (as defined in IC 5-13-4-10) by sending a claim to the financial institution. Upon receipt of a claim under this subsection, the financial institution shall surrender to the commissioner or the commissioner's representative the employer's property. If the employer's property exceeds the amount owed to the state by the employer, the financial institution shall surrender the employer's property in a amount equal to the amount owed. After receiving the commissioner's notice of levy, the financial institution is required to place a sixty (60) day hold on or restriction on the withdrawal of funds the employer has on deposit or subsequently deposits, in an amount not to exceed the amount owed.

SECTION 6. IC 22-8-1.1-35.8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 35.8. (a) This section applies to an employer who is any of the following:**

(1) A domestic corporation (as defined in IC 23-1-20-5).

(2) A foreign corporation (as defined in IC 23-1-20-11).

(3) A limited liability company (as defined in IC 23-18).

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(4) A partnership (as defined in IC 23-4-1).

(5) A limited partnership (as defined in IC 23-16).

(b) An individual who is a responsible officer or member of an employer that is assessed a penalty under this chapter is personally liable for the payment of the assessment, plus any interest, penalties, fees, and costs associated with the assessment, to the state.

SECTION 7. IC 22-8-1.1-35.9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 35.9. (a) When:

(1) an individual or organization becomes an employer under this chapter by acquiring the organization, trade, or business of an employer;

(2) an employer acquires the organization, trade, or business, or substantially all the assets of another employer; or

(3) an employer transfers all or a portion of the employer's trade or business to another employer;

and the acquisition of all or a portion of the assets, organization, trade, or business results in or is used in the operation or continuance of an organization, trade, or business, the successor employer shall assume the position of the predecessor employer for all penalty assessments which have become final under this chapter.

(b) When a successor employer assumes the position of the predecessor employer under subsection (a), the amount of any penalty assessment paid by the predecessor employer shall be deemed to have been paid by the successor employer, and the successor employer shall be credited with the payment.

SECTION 8. IC 22-8-1.1-36.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 36.5. (a) The commissioner may enter into an agreement with an employer concerning the correction or abatement of a violation of this chapter by the employer.

(b) An agreement entered into under this section may call for the employer to correct or abate a violation of this chapter at the employer's expense, if the commissioner determines that the action called for in the agreement will be performed properly.

(c) An agreement entered into under this section may provide that the commissioner shall:

(1) reimburse the employer for certain costs of the actions that the employer has agreed to perform to correct or abate

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a violation of this chapter; or

(2) perform part of the correction or abatement called for in the agreement.

(d) Unless the commissioner determines that the agreement is in the public interest, the commissioner may not enter into an agreement under subsection (c) if, in the commissioner's opinion, there is not a reasonable likelihood of repayment of:

(1) the amount of the reimbursement agreed to under subsection (c); and

(2) other costs incurred by the department in the correction or abatement action.

(e) After entering into an agreement that provides for reimbursement under subsection (c), the commissioner shall make every reasonable effort to recover the amount of the reimbursement from any other person who may be responsible for a violation of this chapter using the remedies available under this chapter.

(f) An agreement entered into under this section may be established:

(1) by an administrative order entered by the commissioner; or

(2) by a consent decree entered in an appropriate court.

SECTION 9. IC 22-8-1.1-38.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 38.1. (a) No person shall discharge or in any way discriminate against any employee because such employee has filed a complaint or instituted or caused to be instituted any proceeding under or related to this chapter or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself or others of any right afforded by this chapter.

(b) Any employee who believes that ~~he~~ the employee has been discharged or otherwise discriminated against by any person in violation of this section may, within thirty (30) calendar days after such violation occurs, file a complaint with the commissioner alleging such discrimination.

(c) Upon receipt of such complaint, the commissioner shall cause such investigation to be made as ~~he~~ the commissioner deems appropriate. If after such investigation, the commissioner determines that the provisions of this section have been violated, ~~he~~, the commissioner, through the attorney general, shall: ~~within~~

(1) **not later than** one hundred twenty (120) days after receipt of said complaint, **for complaints received before July 1, 2009;**

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1 **and**

2 **(2) not later than one hundred fifty (150) days after receipt of**
3 **a complaint, for complaints received after June 30, 2009;**

4 bring an action in the circuit courts of Indiana. The circuit courts of
5 Indiana shall have jurisdiction to restrain violations of this section and
6 order all appropriate relief, including rehiring, or reinstatement of the
7 employee to his former position with back pay, after taking into
8 account any interim earnings of the employee.

9 (c) **(d)** Within ninety (90) days of the receipt of a complaint filed
10 under this section, the commissioner shall notify the complainant in
11 writing of ~~his~~ **the commissioner's** determination under this section.

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